



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 20, 1992

Ms. Phoebe Knauer
Director, Information Release
Texas Employment Commission
T.E.C. Building, Room 651
Austin, Texas 78778

OR92-69

Dear Ms. Knauer:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 11838.

You have received a request for the proposed decision made in a specific case conducted pursuant to Texas Employment Commission Rule 13. *See* 40 T.A.C. § 301.13. You have submitted the proposed decision to us for review and claim that the sections titled "Conclusions" and "Decision" are excepted from required public disclosure by the attorney-client privilege as incorporated into the Open Records Act by section 3(a)(1). You also claim that those sections are excepted from required public disclosure by section 3(a)(11) of the Open Records Act.

Although this office has frequently cited section 3(a)(1) to except from disclosure information within the attorney-client privilege, the privilege is more specifically covered under section 3(a)(7). Open Records Decision No. 574 (1990). Open Records Decision No. 574 held that protection of section 3(a)(7) was limited to information that revealed client confidences to an attorney or that revealed the attorney's legal advice. Information that does not contain legal advice or opinion or reveal client confidences is not protected by section 3(a)(7). *Id.*

We have reviewed the regulation pursuant to which the hearing was conducted, section 301.13 of title 40 of the Texas Administrative Code, and have concluded that a proposed decision submitted to the commission by the hearing examiner is not an attorney-client communication. The regulation does not suggest

in any way that the hearing examiner represents the commission as legal counsel. Rather, the hearing examiner is merely the commission's designated "representative to preside at and hold the hearing." 40 T.A.C. § 301.13(c). Because the relationship between the hearing examiner and commission is not an attorney-client relationship, we conclude that the proposed decision is not exempt from public disclosure as a privileged attorney-client communication.

Section 3(a)(11) protects advice, opinion, or recommendation intended for use in the entity's policy making or deliberative process, Open Records Decision No. 574 (1990), but does not protect facts and written observations of fact, Open Records Decision No. 582 (1990). We have examined the documents submitted to us for review. Some of the information contains advice or opinion. For your convenience, we have marked the information that may be withheld from required public disclosure under section 3(a)(11) of the Open Records Act. The remainder of the information must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-69.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/lcd

Ref.: ID# 11838
ID# 11842
ID# 12056
ID# 12145
ID# 12163

Enclosures: Marked Documents

cc: Mr. Gary W. Grant
President, Vianet
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(w/o enclosures)